LIM BOK HUAT

v.

UNITED ASIAN BANK BHD.

HIGH COURT MALAYA, PENANG
AJAIB SINGH J
[CIVIL APPEAL NO. 42 OF 1980]
24 MARCH 1981

CIVIL PROCEDURE: *Judgment - Default judgment - Defendant absent but Counsel present - Order 19 r. 2(1) Subordinate Court Rules 1950 - "Any party may appear in person or by Solicitor."*

On 16 May 1980 when the case was called up for hearing, the appellant's Counsel informed the Court that the appellant was not in Court. Whereupon the learned President gave judgment in favour of the respondents by default.

The formal order which was drawn up stated that the appellant "being absent though duly served with a copy of summons and statement of claim and no defence filed herein by default it is ordered that the first defendant (appellant) do pay the plaintiff the sum of RM14,451.20."

Held:

[1] A statement of defence was in fact filed and it was included in the appeal record. It was nowhere suggested that this was not a defence filed in proper form.

[2] The default judgment given against the appellant was bad and irregular. It was not correct to say that the appellant was absent as the appellant's solicitor was present in Court. In such an event the appellant could not have been said to be absent because under O. 19 r. 2(1) of the Subordinate Court Rules 1950 "any party may appear in person or by solicitor." Therefore the learned President ought to have proceeded to hear and determine the action in the normal course.

[3] As the learned President had not heard the case on its merits, he was now perfectly entitled to hear it himself or if he was so inclined to arrange for some other President to hear it.

[Appeal allowed - case remitted to the Sessions Court for hearing.]

For the appellant/1st defendant - S.P. Annamalai
For the respondents/plaintiffs - Teja Singh

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Also found at [1981] CLJ 87